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Attorneys for CETYLMAX, LLC and FLEXADREN, LLC

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

IMAGENETIX, INC., a Nevada Corporation,	)	CASE NO. 08 CV 1369 LAB (WMc)
	)	
Plaintiff,	)	<b>COUNTERCLAIM OF CETYLMAX, LLC</b>
	)	<b>FOR DAMAGES, PERMANENT</b>
v.	)	<b>INJUNCTIVE RELIEF, AND</b>
	)	<b>RESTITUTION</b>
CETYLMAX, LLC, a Utah Limited Liability	)	
Company; FLEXADREN, LLC, a Utah Limited	)	
Liability Company,	)	
	)	
Defendant.	)	
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CETYLMAX, LLC, a Utah Limited Liability	)	
Company,	)	
	)	
Counterclaimant,	)	
	)	
v.	)	
IMAGENETIX, INC., a Nevada Corporation,	)	
	)	
Counterdefendant.	)	
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Defendant and Counterclaimant CetylMax, LLC ("CetylMax") hereby alleges in support of its Counterclaim against Imagenetix, Inc. ("Imagenetix") as follows:

**INTRODUCTORY ALLEGATIONS**

1. Counterclaimant CetylMax and counterdefendant Imagenetix each sell products intended for the therapeutic treatment of osteoarthritis pain and stiffness, and their respective

1 products are directly competitive. Initially, CetylMax obtained the ingredients for its product from  
 2 Imagenetix and listed Imagenetix's product, Celadrin, as an ingredient on the CetylMax package.  
 3 However, CetylMax has since discovered that the primary ingredient in Celadrin is not  
 4 "proprietary" as to Celadrin or unique but is, in fact, nothing more than a readily available  
 5 compound known as Cetylated Fatty Acids (or "CFAs") that has been in use since the 1960s, and  
 6 perhaps earlier. Thus, the ingredients in CetylMax are no longer purchased from Celadrin and  
 7 Celadrin is no longer listed as an ingredient on the CetylMax product packaging, but the product  
 8 remains otherwise unchanged with respect to ingredients. Despite these facts, Imagenetix  
 9 continues to market Celadrin to the public as a "brand new joint health breakthrough" that  
 10 contains a "proprietary" and "patented complex blend of special esterified fatty acids oil."  
 11 Imagenetix's false and misleading representations concerning the Celadrin product have caused  
 12 injury to CetylMax as well as to the purchasing public who falsely believe that Celadrin is a new  
 13 and unique treatment when it is not.

#### 14 JURISDICTION AND PARTIES

15 2. This Court has jurisdiction over the claims asserted in this action pursuant to § 39  
 16 of the Lanham Act, 15 U.S.C.A. § 1121 and pursuant to 28 U.S.C.A. § 1338.

17 3. Counterclaimant CetylMax is a Utah Limited Liability Company with its principal  
 18 place of business in North Salt Lake, Utah. CetylMax is in the business of developing, promoting,  
 19 and selling nutritional supplements and other products, including CetylMax, a product available in  
 20 both oral tablet and topical cream forms which is sold for the treatment of osteoarthritis pain and  
 21 stiffness.

22 4. Counterdefendant Imagenetix is a Nevada Corporation with its principal place of  
 23 business in San Diego, California. Imagenetix is in the business of promoting, licensing, and  
 24 selling various nutritional supplements and other products, including Celadrin, a product which is  
 25 sold for the treatment of osteoarthritis pain and stiffness.

#### 26 FACTS COMMON TO ALL CLAIMS

27 5. Commencing sometime prior to June 1, 2005 and continuing to the present,  
 28 Imagenetix began selling a product known as Celadrin which was marketed as a treatment for

1 osteoarthritis pain and stiffness. The primary ingredients in Celadrin are cetylated fatty acids  
2 (“CFAs”).

3 6. Commencing on or about June 1, 2005, CetylMax began marketing and selling a  
4 product (called “CetylMax”) directly competitive with Celadrin. With the permission of  
5 Imagenetix, the CetylMax product initially contained Celadrin as its primary ingredient, and  
6 properly listed Celadrin on the product packaging.

7 7. Subsequently, CetylMax discovered that the primary ingredient in Celadrin was not  
8 a “proprietary” or “patented blend” attributable to Imagenetix, but rather a readily available  
9 compound known as cetylated fatty acids (or “CFAs”) that has been in use for treatment of  
10 osteoarthritis since the 1960s, and perhaps earlier. Thus, CetylMax ceased obtaining the active  
11 ingredient for its product from Imagenetix.

12 8. In advertisements including the [www.Celadrin.com](http://www.Celadrin.com) website, Imagenetix has made  
13 and continues to make numerous claims that the active ingredients contained in Celadrin are  
14 unique to Celadrin, have been found to have efficacy beyond other products on the market, and are  
15 only available in the Celadrin product. These statements are false because the primary ingredients  
16 in Celadrin are cetylated fatty acids (“CFAs”) which have been utilized for treatment of  
17 osteoarthritis pain and stiffness since the 1960s, and perhaps earlier. Imagenetix had nothing  
18 whatsoever to do with the development of CFAs, and the blend of CFAs present in Celadrin is  
19 exactly the same blend of CFAs available in several other products currently on the market for the  
20 treatment of osteoarthritis pain and stiffness. Further, the studies analyzing the efficacy of  
21 Celadrin report findings concerning CFAs in general and do not limit such findings to the  
22 purportedly proprietary blend of CFAs used in Celadrin. Thus, Imagenetix’s representations that  
23 the results of the scientific studies on Celadrin are limited in applicability to the Celadrin product  
24 are false.

25 9. Imagenetix claims on its website that Celadrin is a “brand new joint health  
26 breakthrough.” This statement is false in that it suggests that Celadrin contains a novel therapeutic  
27 ingredient, when in fact, Celadrin’s primary ingredients have been used for the treatment of  
28 osteoarthritis pain and stiffness since the 1960s.



1 counterclaimant to lose customers and sales, and has resulted in lost revenues in an amount  
2 presently unknown, but believed to be no less than \$100,000.

3 17. The conduct of counterdefendant referenced above is likely to cause  
4 counterclaimant irreparable injury by falsely implying that Celadrin is a product superior to  
5 CetylMax and that Celadrin has been scientifically proven to be more effective than CetylMax  
6 when, in fact, the products are the same. This false representation will irreparably damage  
7 CetylMax's reputation because it implies that CetylMax is an inferior product.

## 8 SECOND CAUSE OF ACTION

9 (Violation of California Business & Professions Code § 17200 et seq.)

10 18. Counterclaimant incorporates by reference paragraphs 1 through 17 above, as  
11 though fully set forth hereat.

12 19. Counterclaimant CetylMax brings this action on behalf of itself and also on behalf  
13 of the general public.

14 20. Beginning on a date not known to counterclaimant, but before June 1, 2005,  
15 Imagenetix has engaged in acts of unfair competition by making false and misleading statements  
16 to the public that are likely to mislead consumers into believing that the Celadrin product contains  
17 a unique primary ingredient that is novel, proprietary to Imagenetix, and patented. In fact, the  
18 truth is that Celadrin contains a common compound known as cetylated fatty acids that is readily  
19 available and has been used for treatment of osteoarthritis since the 1960s.

20 21. The acts complained of herein violate California Business & Professions Code  
21 §17200 et seq. for the reasons set forth in paragraphs 8 through 11 above.

22 22. The acts complained of herein violate California Business & Professions Code  
23 §17200 et seq. in that they are likely to mislead and have misled the public, and constitute  
24 fraudulent business practices within the meaning of these statutes.

25 23. Counterdefendants' continued misrepresentations to the public continue to mislead  
26 the public into believing the Celadrin is a novel and unique product and that Celadrin's primary  
27 ingredients are somehow superior to the primary ingredients of other treatments on the market,  
28 and members of the public will continue to purchase Celadrin, expecting that it will improve the



1 pain and stiffness associated with osteoarthritis where other treatments have failed.

2 24. As a direct and proximate result of the acts mentioned herein, Imagenetix has  
3 caused injury to CetylMax, and CetylMax has suffered damages in an amount presently unknown,  
4 but not less than \$100,000.

### 5 **THIRD CAUSE OF ACTION**

6 (Violation of California Business & Professions Code § 17500 et seq.)

7 25. Counterclaimant incorporates by reference paragraphs 1 through 24 above, as  
8 though fully set forth hereat.

9 26. Counterclaimant CetylMax brings this action on behalf of itself and also on behalf  
10 of the general public.

11 27. Beginning on a date not known to counterclaimant, but before March 1, 2005,  
12 Imagenetix has engaged in acts of unfair competition by making false and misleading statements  
13 to the public that are likely to mislead consumers into believing that the Celadrin product contains  
14 a unique primary ingredient that is novel, proprietary to Imagenetix, and patented by Imagenetix.  
15 In fact, the truth is that Celadrin contains a common compound known as cetylated fatty acids that  
16 is readily available and has been used for the treatment of osteoarthritis since the 1960s, and  
17 perhaps earlier.

18 28. The acts complained of herein violate California Business & Professions Code  
19 §17500 et seq. for the reasons set forth in paragraphs 8 through 11 above.

20 29. The acts complained of herein violate California Business & Professions Code  
21 §17500 et seq. in that they are likely to mislead and have misled the public, and constitute unfair  
22 and unlawful business practices within the meaning of these statutes.

23 30. Counterdefendant's continued misrepresentations to the public continue to mislead  
24 the public into believing the Celadrin is a novel and unique product and that Celadrin's primary  
25 ingredients are somehow superior to the primary ingredients of other treatments on the market,  
26 and members of the public will continue to purchase Celadrin, expecting that it will improve the  
27 pain and stiffness associated with osteoarthritis where other treatments have failed.

28 31. As a direct and proximate result of the acts mentioned herein, Imagenetix has

caused injury to CetylMax, and CetylMax has suffered damages in an amount presently unknown, but not less than \$100,000.

**PRAYER FOR RELIEF**

WHEREFORE, counterclaimant prays for judgment against counterdefendant as follows:

1. For an injunction prohibiting Imagenetix from making or causing to be made to the public, the unlawful representations including the following:

- a. That Celadrin is a "brand new joint health breakthrough";
- b. That Celadrin contains a "proprietary compound";
- c. That Celadrin contains a "patented complex blend of special esterified fatty acids oil";

or any other statements implying that Celadrin contains unique ingredients not available in other products;

2. For restitution to the general public of all revenues generated by Imagenetix thought acts of unfair and unlawful competition;

3. For damages to CetylMax in an amount no less than \$100,000 for lost profits;

4. For damages in an amount of no less than \$100,000 for profits wrongfully earned by Imagenetix through the wrongful conduct described herein;

5. For punitive damages;

6. For costs of suit;


7. For attorney's fees; and

8. For such further relief as the Court deems appropriate.

DATED: August 22, 2008

ERVIN COHEN & JESSUP LLP  
Heather L. McCloskey

By:

  
Heather L. McCloskey  
Attorneys for CETYLMAX, LLC and  
FLEXADREN, LLC

**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 ) ss:  
 COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 9401 Wilshire Boulevard, Beverly Hills, California 90212-2974.

On August 22, 2008, I served the document described as **COUNTERCLAIM OF CETYLMAX, LLC FOR DAMAGES, PERMANENT INJUNCTIVE RELIEF, AND RESTITUTION** on counsel for the parties in this action, or on the parties in propria persona, addressed as stated below:

Erwin J. Shustak  
 Thomas C. Frost  
 Shustak Frost & Partners, P.C.  
 401 West "A" Street, Suite 2330  
 San Diego, CA 92101

☒ BY MAIL: By placing true and correct copies thereof in individual sealed envelopes, with postage thereon fully prepaid, which I deposited with my employer for collection and mailing by the United States Postal Service. I am readily familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, this correspondence would be deposited by my employer with the United States Postal Service on that same day. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

☐ BY NEXT-DAY DELIVERY: Via Overnight Express. I am readily familiar with my employer's practice for the collection and processing of correspondence via Overnight Express. In the ordinary course of business, this correspondence would be picked up by Overnight Express on that same day.

☐ BY FACSIMILE: I caused such document to be sent via facsimile to the names and facsimile numbers listed above and received confirmed transmission reports indicating that this document was successfully transmitted to the parties named above.

☐ (STATE) I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

EXECUTED on August 22, 2008 at Beverly Hills, California.

  
 PATRICIA ROJAS